

**WEST VIRGINIA ENVIRONMENTAL QUALITY BOARD
CHARLESTON, WEST VIRGINIA**

JACKS BRANCH COAL COMPANY,

Appellant,

v.

Appeal No. _____

**DIRECTORS, DIVISION OF WATER AND
WASTE MANAGEMENT AND DIVISION OF
MINING AND RECLAMATION, DEPARTMENT
OF ENVIRONMENTAL PROTECTION,**

Appellee.

NOTICE OF APPEAL AND REQUEST FOR STAY

Action Complained Of: The appellant(s) named above respectfully represent(s) that it is aggrieved by:

1. WVDEP's three orders of March 24, 2010 to Jacks Branch Coal Company concerning Modification Nos. 16 on NPDES Permit No. WV0093912; Modification No. 18 on NPDES Permit No. WV0093929; and Modification No. 23 on NPDES Permit No. WV1012452; and

2. WVDEP's order of March 25, 2010 (attached) concerning the compliance date of April 5, 2010 for meeting selenium limits on Jacks Branch Coal Company Permit No. WV0093912.

Relief Requested: The appellant therefore prays that this matter be reviewed and that the Board grant the following relief:

1. That WVDEP's decision to deny the above-listed modification requests be reversed and granted.

2. That WVDEP's orders of March 25, 2010 imposing final compliance date of April 5, 2010 and abrogating later compliance dates included in "Attachment A" issued by WVDEP with Compliance Orders of April 5, 2007, be reversed and the compliance dates included in the "Attachment A" be re-instated. In the interim, Appellants request a stay as set forth in the attached order.

Specific Objections: The specific objections to the action, including questions of fact and law to be determined by the Board, are set forth below:

1. WVDEP's decisions to deny the modification requests were arbitrary, capricious and unlawful;

2. WVDEP's order of March 25, 2010 is arbitrary, capricious and unlawfully altered Jacks Branch's effluent limits without prior notice and in contravention of the Water Pollution Control Act.

Amendment of this Notice of Appeal may be had only by leave of the Board, and only for good cause shown.

Dated this 1st day of April, 2010.

JACKS BRANCH COAL COMPANY

By Counsel



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CERTIFICATE OF SERVICE

I, Robert G. McLusky, do hereby certify that a true and exact copy of the foregoing NOTICE OF APPEAL AND REQUEST FOR STAY was caused to be served upon the following via United States mail, postage pre-paid, this 1st day of April, 2010.

Raymond S. Franks II
Acting Chief
Office of Legal Services
West Virginia Department of Environmental Protection
601 57th Street, SE
Charleston, WV 25304



ROBERT G. McLUSKY